



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 24, 1995

Ms. JoAnn S. Wright
School Attorney
Arlington Independent School District
1203 West Pioneer Parkway
Arlington, Texas 76013-6246

OR95-663

Dear Ms. Wright:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 30872.

The Arlington Independent School District (the "school district") received a request from a parent for copies of notes made from any meetings or conferences concerning her complaint against a teacher and any notes made by the principal concerning the complaint. The school district contends that all of the requested information is excepted from required public disclosure under section 552.111 of the Government Code. The school district also claims that portions of the requested information are confidential under sections 552.104 and 552.114 of the Government Code.

Section 552.111 excepts "[a]n interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." Section 552.111 excepts from public disclosure only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body at issue. Open Records Decision No. 615 (1993) at 5. The policymaking functions of an agency, however, do not encompass routine internal administrative and personnel matters. *Id.* Furthermore, section 552.111 does not except purely factual information from disclosure. *Id.* As the requested information concerns routine internal administrative and personnel matters, the school district may not withhold the requested information under section 552.111 of the Government Code.¹

¹You suggest that this office should reconsider the interpretation of section 552.111 in Open Records Decision No. 615 (1993) in light of a July 25, 1994, ruling in *Klein Independent School District*

Under section 552.114(a), information is excepted "if it is information in a student record at an educational institution funded wholly or partly by state revenue." Section 552.026 incorporates another source of law, specifically, the federal Family Educational Rights and Privacy Act of 1974 ("FERPA"), into the Open Records Act, providing that the act

does not require the release of information contained in education records of an educational agency or institution, except in conformity with the Family Educational Rights and Privacy Act of 1974, Sec. 513, Pub. L. No. 93-380, 20 U.S.C. Sec. 1232g.

Gov't Code § 552.026; *see also* Open Records Decision No. 431 (1985). FERPA provides the following:

No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of educational records (or personally identifiable information contained therein other than directory information, as defined in paragraph (5) of subsection (a) . . .) of students without the written consent of their parents to any individual, agency, or organization.

20 U.S.C. § 1232g(b)(1). However, FERPA provides that education records must be released to the parents of minor students or to a student who is eighteen years of age or attends an institution of postsecondary education. *Id.* § 1232g(a) (1)(A), (d).² "Education records" are records which:

- (i) contain information directly related to a student; and
- (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

(Footnote continued)

v. Lett, No. 93-061897 (80th Dist. Ct., Harris County, Tex., July 25, 1994). This office is not a party to that action. Furthermore, appellate courts in Texas do not rely upon unpublished opinions as authority. *Wheeler v. Aldama-Luebbert*, 707 S.W.2d 213, 216 (Tex. App.--Houston [1st Dist.] 1986, no writ) ("An unpublished opinion of this Court or any other court has no authoritative value."); *see also* Tex. R. App. P. 90(i) ("Unpublished opinions shall not be cited as authority by counsel or by a court."); *Orix Credit Alliance v. Omnibank*, 858 S.W.2d 586, 593 n.4 (Tex. App.--Houston [14th Dist.] 1993, writ dismissed); *Carlisle v. Philip Morris, Inc.*, 805 S.W.2d 498, 501 (Tex. App.--Austin 1991, writ denied). For this reason, the Office of the Attorney General generally does not consider unpublished rulings in making determinations under the Open Records Act. This office continues to adhere to Open Records Decision No. 615 (1993).

²We note that parents are entitled to view or be informed of information pertaining only to their children in a case where the education records include information pertaining to more than one student. 20 U.S.C. § 1232g(a)(1)(A).

Id. § 1232g(a)(4)(A). Sections 552.114(a) and 552.026 may not be used to withhold entire documents; the school district must delete information only to the extent "reasonable and necessary to avoid personally identifying a particular student" or "one or both parents of such a student." Open Records Decision No. 332 (1982) at 3. Thus, only information identifying or tending to identify students or their parents must be withheld from required public disclosure.

We note that because the requestor is the parent of one of the students identified in the documents, records identifying the requestor or her child may not be redacted or withheld. However, these records would have to be reevaluated under section 552.114 and FERPA subject to a request for records made by another requestor. The portions of the requested records that relate to students other than the requestor's child must be withheld. For your convenience, we have marked the information that must be withheld under section 552.114 and FERPA. As we resolve this matter under section 552.114 and FERPA, we need not address the applicability of section 552.104.³

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Government Section

LRD/LBC/rho

Ref: ID# 30872

Enclosures: Marked documents

³We note, however, that the school district refers to section 552.104 as excepting "confidential information" from required public disclosure. Section 552.104 excepts "information that, if released, would give advantage to a competitor or bidder." Section 552.104 is designed to protect the interests of the governmental body as in a competitive bidding situation for a contract or benefit. Open Records Decision No. 592 (1991) at 8. It is not designed to protect witness statements or "confidential information."

bcc: Mrs. Christine Clement
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(w/o enclosures)